

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**ROCYCEE WALKER**  
Claimant

**APPEAL NO. 09A-UI-04277-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HEARTLAND EXPRESS INC OF IOWA**  
Employer

**OC: 02/15/09**  
**Claimant: Respondent (2-R)**

Section 96.5(2)a- Discharge

**STATEMENT OF THE CASE:**

The employer, Heartland Express, filed an appeal from a decision dated March 16, 2009, reference 01. The decision allowed benefits to the claimant, Rocycee Walker. After due notice was issued a hearing was held by telephone conference call on April 13, 2009. The claimant participated on his own behalf. The employer participated by Human Resources Generalist Leah Peters and Fleet Manager Justin German. Exhibit One was admitted into the record.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Rocycee Walker was employed by Heartland from September 21, 2007 until October 23, 2008 as a full-time over-the-road truck driver. At the time of hire he received a copy of the employee handbook which states, in part, a driver is subject to disciplinary action, up to and including discharge, for refusing to take a load. He had been verbally counseled about safety violations, exceeding his allowed driving hours and late deliveries.

Mr. Walker had refused a load to Pennsylvania in August 2008, on the grounds he was a regional driver and this was outside his region. On August 20, 2008, Fleet Manager Justin German counseled him about this, reminding him the policies do state a regional driver may be required to deliver loads outside his region if required by the employer. He signed a confirmation statement on that date.

On October 20, 2008, the claimant was contacted by dispatch to assist in relaying a load. He was already dispatched to another location, but Heartland wanted him to switch loads with another driver. His current load would be delivered by the other driver and he would finish the other driver's destination. He refused on the grounds it was outside his region and that the other driver should have left early enough to deliver the load himself. He also felt the late delivery would be counted against him as a "delivery failure."

The employer wanted to set up the relay between Mr. Walker and the other driver because the other driver had been approved for vacation and wanted to arrive at his home base in time to begin it as scheduled. If the load was late it would not be counted against Mr. Walker as he was only the relay driver, not the originator.

After the claimant refused to assist in the relay he was discharged by Fleet Manager Justin German by phone on October 23, 2008. Rocycee Walker has received unemployment benefits since filing a claim with an effective date of February 15, 2009.

#### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The claimant had been advised his job was in jeopardy as a result of his refusal to take loads out of his region when required. In spite of this warning he again refused a load two months later on the same grounds. He knew he was required to drive outside his region but still refused. His assumption he would be held responsible for any late deliveries was incorrect and he never questioned his dispatcher or fleet manager to get the facts. His refusal to take the load is a violation of a known company rule and conduct not in the best interests of the employer. He is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which he is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

**DECISION:**

The representative's decision of March 16, 2009, reference 01, is reversed. Rocycee Walker is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs